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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 RUSSELL J. YOUNG,

11 Plaintiff,

12 v.

13 KIRSTIE PUUMALA, et al.,

14 Defendant.

CASE NO. 3:19-CV-6157-RJB-DWC

ORDER RENOTING APPLICATION
TO PROCEED *IN FORMA PAUPERIS*

15 The District Court has referred Plaintiff's pending Application to Proceed *In Forma*
16 *Pauperis* ("IFP") and Proposed Complaint to United States Magistrate Judge David W. Christel
17 pursuant to Amended General Order 02-19.

18 On December 2, 2019, Plaintiff Russell J. Young filed a civil complaint and, on
19 December 16, 2019, Plaintiff filed a complete application to proceed *in forma pauperis* ("IFP"),
20 that is, without paying the filing fee for a civil case. *See* Dkt. 1-1, 4.

21 **Standard for Granting Application for IFP.** The district court may permit indigent
22 litigants to proceed IFP upon completion of a proper affidavit of indigency. *See* 28 U.S.C. §
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1 1915(a). However, the court has broad discretion in denying an application to proceed IFP.
2 *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963).

3 **Plaintiff's Application to Proceed IFP.** Plaintiff states that he is unemployed and, over
4 the last 12 months, has received \$816.00 from disability, unemployment workers compensation
5 or public assistance. Dkt. 4, p. 1. Plaintiff states he has \$12.00 cash on hand and \$53.00 in his
6 bank accounts. *Id.* at p. 2. Plaintiff has no assets and spends \$700.00 per month on living
7 expenses. *Id.* He states he is on Social Security disability and cannot work. *Id.*

8 **Review of the Complaint.** The Court has carefully reviewed the complaint in this
9 matter. Because Plaintiff filed this complaint *pro se*, the Court has construed the pleadings
10 liberally and has afforded Plaintiff the benefit of any doubt. *See Karim-Panahi v. Los Angeles*
11 *Police Dep't*, 839 F.2d 621, 623 (9th Cir.1988).

12 In the proposed complaint, Plaintiff alleges violations of his civil rights under 42 U.S.C. §
13 1983. Dkt. 1-1. To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
14 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
15 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
16 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

17 Here, while difficult to decipher, Plaintiff states he pled guilty to one count of child
18 molestation in 1992. Dkt. 1-1, p. 4. Plaintiff contends Defendants Kristie Puumala, Misty
19 Allison, Ryan Jurvakain, and Alfred "Art" Bennett provided false information regarding the
20 alleged crimes. *Id.* Plaintiff requests the Cowlitz County District Attorney Ryan Jurvakain
21 declare that Plaintiff is innocent and exonerate Plaintiff of the crimes on his record. *Id.* at p. 5.
22 He also requests damages in the amount of \$50,000,000.00.

1 ***Sua Sponte Dismissal – Standard on Rule 12 (b).*** Pursuant to Fed. R. Civ. P. 12 (b), a
2 case may be dismissed for “(1) lack of subject matter jurisdiction; (2) lack of personal
3 jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6)
4 failure to state a claim upon which relief can be granted; and (7) failure to join a party under
5 Rule 19.” Under Fed. R. Civ. P. 12 (b)(6), a federal court may dismiss a case *sua sponte* when it
6 is clear that the plaintiff has not stated a claim upon which relief may be granted. *See Omar v.*
7 *Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) (“A trial court may dismiss a claim *sua*
8 *sponte* under Fed. R. Civ. P. 12 (b)(6). Such a dismissal may be made without notice where the
9 claimant cannot possibly win relief.”). *See also Mallard v. United States Dist. Court*, 490 U.S.
10 296, 307-08 (1989) (there is little doubt a federal court would have the power to dismiss
11 frivolous complaint *sua sponte*, even in absence of an express statutory provision). A complaint
12 is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745 F.2d 1221,
13 1228 (9th Cir. 1984).

14 **Analysis of Plaintiff’s Claims.** The allegations in the proposed complaint focus on
15 Plaintiff’s allegedly unlawful incarceration. *See* Dkt. 1-1. The Court finds Plaintiff’s convictions
16 would be invalidated if he were to prove the allegations in the proposed complaint. Thus, the Court
17 finds Plaintiff’s claims are barred by *Heck v. Humphrey*, 512 U.S 477 (1994).

18 A plaintiff may only recover damages under § 1983 for allegedly unconstitutional
19 imprisonment, or for any other harm caused by actions whose unlawfulness would render the
20 imprisonment invalid, if he can prove the conviction or other basis for confinement has been
21 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
22 authorized to make such a determination, or called into question by a federal court’s issuance of a
23 writ of habeas corpus. *Heck*, 512 U.S. at 486-87. A “§ 1983 action is barred (absent prior
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1 invalidation) –no matter the relief sought (damages or equitable relief), no matter the target of his
2 suit (state conduct leading to the conviction or internal prison proceedings) –*if* success in that
3 action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson v.*
4 *Dotson*, 544 U.S. 74, 81-82 (2005) (emphasis in original).

5 Plaintiff alleges Defendants were involved in “the unlawful reporting, court filing, and trial
6 of [Plaintiff].” Dkt. 1-1, p. 4. Plaintiff states Defendants have knowledge of information that is
7 exculpatory. *Id.* If Plaintiff proves the allegations in the proposed complaint, it would be grounds
8 for invalidation of his underlying conviction. For example, if Plaintiff proves exculpatory evidence
9 was not provided to his trial counsel, it is possible his plea could be found to be involuntary. This
10 could invalidate the conviction.

11 As Plaintiff’s allegations amount to an attack on the constitutional validity of his
12 underlying convictions, the proposed complaint may not be maintained under § 1983 unless
13 Plaintiff can show the convictions have been invalidated. *See Heck*, 512 U.S. at 486-87; *Ramirez v.*
14 *Galaza*, 334 F.3d 850, 855-56 (9th Cir. 2003). Plaintiff does not allege his convictions have been
15 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
16 authorized to make such determination, or called into question by a federal court’s issuance of a
17 writ of habeas corpus. As Plaintiff’s current convictions have not been reversed and as the validity
18 of the convictions would be called into question if Plaintiff were to prove the facts of this case, his
19 claims are barred by *Heck*. Therefore, Plaintiff must show cause why this case should not be
20 dismissed as *Heck* barred.

21 Furthermore, the events giving rise to the allegations in the proposed complaint occurred
22 in July of 1992. Dkt. 1-1, p. 4. A complaint must be timely filed. The Civil Rights Act, § 1983,
23 contains no statute of limitations. “Thus, the federal courts [] apply the applicable period of
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1 limitations under state law for the jurisdiction in which the claim arose.” *Rose v. Rinaldi*, 654
2 F.2d 546, 547 (9th Cir. 1981). In *Rose*, the Ninth Circuit determined the three year limitations
3 period identified in Revised Code of Washington 4.16.080(2) is the applicable statute of
4 limitations for § 1983 cases in Washington. 654 F.2d at 547; *see* R.C.W. § 4.16.080(2).

5 The Court also applies the forum state’s law regarding equitable tolling for actions
6 arising under § 1983. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). In Washington, courts
7 permit equitable tolling “when justice requires.” *Millay v. Cam*, 135 Wash.2d 193, 206 (1998).
8 “The predicates for equitable tolling are bad faith, deception, or false assurances by the
9 defendant and the exercise of diligence by the plaintiff.” *Id.* Courts “typically permit equitable
10 tolling to occur only sparingly, and should not extend it to a garden variety claim of excusable
11 neglect.” *State v. Robinson*, 104 Wash.App. 657, 667 (2001) (internal quotations omitted).
12 Washington State also allows for a tolling period when a person is imprisoned on a criminal
13 charge prior to sentencing. *See* R.C.W. § 4.16.190; *see also Williams v. Holevinski*, 2006 WL
14 216705, *2 (E.D. Wash. July 31, 2006).

15 Although the statute of limitations is an affirmative defense which normally may not be
16 raised by the Court *sua sponte*, it may be grounds for *sua sponte* dismissal of an IFP complaint
17 where the defense is complete and obvious from the face of the pleadings or the Court’s own
18 records. *See Franklin v. Murphy*, 745 F.2d 1221, 1228–30 (9th Cir. 1984).

19 From the allegations contained in the proposed complaint, Plaintiff had actual notice of
20 the facts related to the claims alleged in the proposed complaint on July 2, 1992. *See* Dkt. 1-1;
21 *Kimes v. Stone*, 84 F.3d 1121, 1128 (9th Cir. 1996) (a claim accrues when the plaintiff knows or
22 has reason to know of the injury which is the basis of the action). The time for filing a lawsuit
23 expired on July 2, 1995, three years after Plaintiff’s constitutional rights were allegedly violated.

1 See Dkt. 1-1. Plaintiff initiated this lawsuit on December 2, 2019, more than twenty-four years
2 after the statute of limitations expired. See Dkt. 1. Plaintiff has not shown statutory or equitable
3 tolling is applicable in this case. See Dkt. 1-1. Therefore, Plaintiff must show cause why the
4 proposed complaint should not be dismissed because it is untimely.

5 The Court also notes several named Defendants do not appear to be state actors and,
6 therefore, cannot be liable under § 1983. Thus, if Plaintiff files an amended complaint, he must
7 clearly identify the named defendants and how each defendant is a state actor acting under color
8 of state law.

9 **Leave to Amend.** Unless it is absolutely clear that no amendment can cure the defect, a
10 *pro se* litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend
11 prior to dismissal of the action. See *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995).

12 While it appears any attempt by Plaintiff to amend the proposed complaint would be
13 futile, in an abundance of caution, the Court finds Plaintiff should be afforded an opportunity to
14 amend his proposed complaint to try to state a claim under § 1983. Plaintiff's proposed amended
15 complaint, if any, should be filed on or before February 28, 2020.

16 **Decision on Application to Proceed IFP.** A district court may deny leave to proceed *in*
17 *forma pauperis* at the outset if it appears from the face of the proposed complaint that the action
18 is frivolous or without merit. *Minetti v. Port of Seattle*, 152 F.3d 1113 (9th Cir. 1998), quoting
19 *Tripathi v. First Nat'l Bank & Trust*, 821 F. 2d 1368, 1370 (9th Cir. 1987).

20 Based upon the above analysis of the deficiencies in the proposed complaint, the Court
21 finds it appropriate to re-note Plaintiff's application to proceed IFP (Dkt. 4) to February 28,
22 2020.

Accordingly, it is hereby **ORDERED** that:

- Plaintiff's application to proceed *in forma pauperis* (Dkt. 1) is **RENOTED** to **FEBRUARY 28, 2020**; and
- Plaintiff's proposed amended complaint, if any, **IS DUE** on or before **FEBRUARY 28, 2020**.

Dated this 24th day of January, 2020.



David W. Christel
United States Magistrate Judge